O.W.Kh. Mehwassi

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File No. Estates / 51

Legal Department

A **BRANCH**

Subject:—

Opinions ——

Under the West Khandesh

Mehwassi Estates Regulation, 1949

P. 8 / E1

O.W. Kh. Mehwassi Estates / 51

File No.

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C O N T E N T S.

Legal Department File No. O.W.Kh.Mehwassi Estates/ 1951.

No.	R.I./O.No.	Subject	pages
		Opinions under West Khandesh Mehwassi Estates Regulation, 1949.	
1.	6021/14.4.51	Question 'i) whether after the enactment of the Regulation, the Bombay Land Revenue Code applies to these estates with modifications shown in the Sch. and these modifications make it clear that the status of Mehwassi is analogous to that of Talukdars in Gujarat after, abolition of the talukdari system (2) whether the Bombay special definition of the status of the chieftains in necessary (3) whether the Bombay Talukdari Abolition Act, 1949, applies to Mehwassi Estates & (4) whether it is abligatory on Govt. to pay the Chieftains compensation under the Talukdari Abolition Act, 1949.	1-2
2.	10796/9.7.51.	Question (i) whether the Mehwassi Chieftains can claim to have a share in the land revenue and (2) whether Gavthan sites in the Mehwassi estates can be disposed of by Govt. or the Chieftains.	3-6
3.	15744/4.10.51.	Questions (i) whether it is binding of the Govt. to continue to pay pension to the Revenue servants of the Mehwassi Chieftains, e.g. talathis from out of the General revenue and (2) whether Govt is under any liability to pay pension or allowances to the Bhaubands of the Chieftains.	7-10
4.	19803/10.12.51.	Question whether tenants in Mehwassi Estates are tneitled entitled to cut down mhowra trees standing in the fields or whether permission of the Mehwassi Chieftains will be required for doing so.	11-14

S.C. 28/6
5 copies.

P.M. 7/8
M.G.D. 7/8

Legal Department.

Khandesh Mehwassi Estates Regulation, 1949.

Attention is invited to para 4 of Additional Secretary's opinion No. 4309, dated 20th April 1949, where it is held that section 3 of the Regulation I of 1949 read with the second schedule purports to apply the provisions of the Bombay Land Revenue Code on the basis that the Mehwassis will have the same status as talukdars in Gujarat after the abolition of the talukdars' tenure. On the enactment of the said Regulation the Mehwassi Chiefs will be subject to all the rights conferred, and liabilities imposed by or under the said Code (see Additional Secretary's No. 6114, dated 1st June 49). By applying the provisions of the Code this area was brought in line with other areas in the State subject to the modifications specified in Schedule II of the Rg Regulation. There was no question of defining status of the Chieftains. The Bombay Talukdari Tenure Abolition Act, 1949 was published on 24th January 1950. Sub-section (2) of section 1 provides that it extends to the districts of Ahmedabad, Kaira, Broach and Panch Mahals as constituted immediately before 1st August 1949. The Bombay Regulation No. I of 1949 was published on 31st January 1950. Section 4 of the Regulation provides that all other Acts passed by Central or Provincial legislature which are not in force in the territory of the Mehwassi Estates but are in force in the other part of the District of West Khandesh shall come into force in the territory of the Mehwassi Estates. Since the Bombay Talukdari Tenure Abolition Act, 1949 applies only to districts mentioned in section 1(2) of that Act and not to the district of West Khandesh it does not appear that it applies to these Mehwassi Estates. No provision is made in the Regulation for payment of any compensation to the Chieftains as their

S.E. 27/6
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rights in land were not in any way affected.

Sd/ B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 6021 , dated 14-4-1951.

S.C. 27/6

4 copies.

Office of the R.L.A.

The questions that arise for the consideration of the R.L.A. are whether :-

(1) the Mehwassi Chieftains canclaim to have a share in theland-revenue; and

(2) whether Gavthan sites in the Mehwassi estates can be disposed of by Government or theChieftains.

2. The West Khandesh Mehwassi Estates Regulation, 1949, was enacted for the purpose of a declaring thelaws in force in the territory of the Mehwassi Estates. By section 3 of tha Ordinance the Bombay Land Revenue Code, 1879, subject to the modifications specified in Schedule II, was brought into force in t ose Estates. In this connection the attention of the R.D. is invited to Additional Secretary's opinion No. 4309, dated 20th April 1949. As pointed out in para. 1 of that opinion, the claim of the Mehwassi Chieftains to any rights of a rulingchief has long since been negatived. The Mehwassi Estates were at no time, since theadvent of the British rule, recognised as the territories of any ruling chief. Throughout the Estates were treated as parts of British India, now the Republic of India. Since the Bombay Land Revenue Code has been brought into force in the area ofthe Mehwassi Estates, the Mehwassi Chiefs will be subject to all the rights conferred, and liabilities imposed, by or under the said Code. The collection of land revenue will be made according to the provisions of the Code (Vide Additional Secretary's opinion No. 6114, dated 1st June 1949). As it is the paramount right of Government to levy and recover land revenue, the Chieftains cannot claim to get a share in the collections of that revenue.

3. As regards the other question, namely, about the disposal of village sites, Government had, before the enactment of the Regulation of 1949, agreed that the Mehwassi Chieftain should be given the status of taluqdars. Section 3 of the Ordinance read with the second Schedule

thereto was, therefore, enacted for the purpose of applying the provisions of the Bombay Land Revenue Code on the basis that the Mehwassi Chieftains will have the same status as taluqdars in Gujarat. There is no provision in theRegulation of 1949 on the lines of section 6 of the Bombay Taluqdari Tenure Abolition Act, 1949, x vesting public places, villages sites, etc. in the State Government. The ownership of village sites would, therefore, continue to vest in the Chieftains and it would be competent to them to deal with the sites subject to the rights of an individual or of the public . The right to dispose of village sites in the estates cannot be held to have been transferred to Government.

Sd/-J.R. Dhurandhar.
7-7

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10796 dated the 9th July 1951.

S.C. 27/6

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Office of the R.L.A.

The question referred to the R.L.A. for consideration are :

(1) whether it is binding on this Government to continue to pay pension to the Revenue servants of the Mehwassi Chieftains, e.g. talathis from out of thegeneral revenue; and

(2) whether Government is under any liability to pay pension or allowances to the Bhaubands of the Chieftains.

2. The Collector of West Khandesh in his letter at page 1 ante has referred to the case of ~~x~~ one Shri L.N.Bhargre who was the talathi of Gangtha saza of ~~xxx~~ the Nassawa of Chikli which is a Mehwassi Estate for the purposes of the West Khandesh Mehwassi Estates Regulation, 1949. The Chief of Chikli by his order dated 15th December 1949 had sanctioned him a pension of Rs. 18/- per month "from the funds of the estate for the services rendered by him". The West Khandesh Mehwassi Estates Regulation, 1949, was enacted for the purpose of declaring the laws in force in the territory of the Mehwassi Estates, By section 3 of that Ordinance the Bombay Land Revenue Code, 1879, subject to the modifications specified in Schedule II, was brought into force in those Estates. The collection of land revenue, after the application of the Code, will be made according to the provisions of the Code, The pension to the talathi in question was sanctioned by the Chieftain of Chikhli for the services rendered by him as a talathi before the Land Revenue Code came into force. There is nothing in the Ordinance to suggest that the obligation to pay the pension has been transferred to the State Government. As stated by the Collector the position of the Chieftains is not like that of Rulers after the merger of their States. It does not therefore appear that the Government of Bomb is liable to continue to pay the pensions.

3. The next question is whether the State Government is under any obligation to pay pensions or allowances to the Bhaubands of the Chieftains. The Collector of West Khandesh states in this connection that the Chieftains have discontinued payment of allowances to them; but the latter hold sanads issued by their forefathers. As stated by the Revenue Department, however, the allowances appear to be in the nature of maintenance allowances and there is nothing to show that the Government of

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Bombay has accepted the liability to pay such allowances. The view expressed by the Revenue Department in this respect appears to be correct.

Sd/- J.R.Dhurandhar.
3-10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15744 dated 4th October 1951.

S.C. 27/6

4 copies.

The question raised for the consideration of the R.L.A. is whether tenants in Mahwassi Estates are entitled to cut down mhowra trees standing in the fields or whether permission of the Mehwassi Chieftains will be required for doing so.

2. The Collector of West Khandesh in his letter at p. 15 ante considers that the trees vest in the Chieftains and therefore their consent will be required before cutting them down. But this view of the Collector does not appear to be correct, The Collector in support of his view has placed reliance upon several proclamations issued by the Chieftains in which they have stated that all mhowra trees are of their ownership. The proclamations seem to have been issued by the Chieftains on the assumption that the trees were reserved to them in their capacity as Ruling Chiefs. But there is no basis for that. The claims of the Mehwassi Chieftains to any rights of a Ruling Chief have long since been negatived. As observed by the Additional Secretary in para 1 of his opinion No. 4309, dated 20th April 1949, the Mehwassi Estates had all along been treated as part of British India - now the Republic of India; and at no time since the advent of the British rule the estates were recognised as the territories of any Ruling Chief. The proclamations thus appear to have been issued by the Chief in excess of this alleged right as a Ruling Chief; and cannot be relied upon for deciding the question raised as proposed by the Collector.

3. After the coming into force of the West Khandesh Mehwassi Estates Regulation, 1949, and the application of the Bombay Land Revenue Code, 1879, to the territories of the Estates, theposition of the Chieftains has been brought on par with that of superior holders; and in view of section 2 of that Regulation the relation between the Chieftains and their tenants is now governed by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. It is true that section 19 of that Act declares the right of the tenants to the produce and wood of trees planted by them and to

compensation in respect of them on the termination of tenan tenancy. Similarly section 20 provides for the tenants' right to receive two-thirds of the total produce of trees na naturally growing on the land. But the mhowra trees cannot be said to be trees of the type referred to in sections 19 and 20. It appears from Shri Natwadkar's letter at pp. 1-2 ante that there are thousands of mhowra trees standing in thefields in the Mehwassi Estates. Admitedly the tenancy is an agriculatural one, in which case the power to remove the mhowra trees would appear to be implied, and it would be absolutely essential to the privilege of cultivating the lands. "Contracts relating to mode of tillage are generally framed in accordance with the custom of the country where the lands are situated, the object being the protection and benefit of the landlord and preventing the tenant from over cropping and deteriorating th property during the term and leaving it in an impoverished state at the expiration thereof" (e.g. covenant not to breal up pasture) (vide Woodful's law of Landlord and Tenant, - p. 730). But the same cannot be said of mhowra trees. If as stated in Shri Natwadkar's letter the mhowra trees are a hindrance to the proper cultivation of the lands which are held by the tenants for the purpose of agriculture there would appear to be no objection to the tenants cutting the and no permission of the Chieftains would be necessary.

Sd/ J.R.Dhurandhar.

8-12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 19803 dated 10th December 1951.